

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 941 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

VIHA NARSUNG RAJPUT & ORS.

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Appearance:

Mr.M.A.Bukhari, APP, for the Appellant.  
Respondents No. 1, 2, 3, & 4 served.

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 20/09/96

ORAL JUDGEMENT

1. Appellant - State of Gujarat, has filed this appeal under S.378 of the Code of Criminal Procedure, 1973, challenging the legality and validity of the judgment and order dated 30.6.1990, passed by the learned Judicial Magistrate First Class, Deesa, in Criminal Case No. 3273 of 1985, whereby the Respondents-accused no.1 to 4 were acquitted of the charges under Ss. 324, 325, 323, 504 read with S.114 of the I.P.Code.

2. The prosecution case may briefly be stated as under:

Complainant Sonaji Vaghaji was residing at Shivnagar, Tharad alongwith his family members. The incident in question took place on 30.4.1984 when the complainant was at his house, and he saw that his son Versi came in bleeding condition. When he asked Versi as to what had happened and how he had received injuries, he informed the complainant that when he was taking bath at the boring which was situated at Narandevi Mata at about 10.00 a.m. the respondents-accused came there and told him that they wanted to take bath and therefore, he should go from that place. When Versi refused to go away from the boring, he was assaulted by the respondents-accused, who were carrying with them stick, axe, etc. It is alleged by the prosecution that respondent no.1 was carrying a wooden log with him, respondent no.2 was armed with a stick and respondent no.3 had an axe with him, and that all the respondents gave blows on the body of Versi with wooden log and blunt portion of the axe. It is alleged that accused no.4 had given fist blows and kick blows to Versi. The complainant thereafter lodged his complaint at the Tharad Police Station against the respondents-accused at 6.00 p.m., for the offences as stated above, which was registered at C.R.No. 34/84. The investigation was handed over to PSI Shri R.C.Sharma. Shri Sharma visited the place of incident on 1.5.1984 and prepared the panchnama of the place of incident. He recorded the statements of witnesses. On 2.5.1984, all the accused presented themselves before the Investigating Officer and produced the incriminating articles before him. The accused were arrested and the incriminating articles used by the accused in the commission of the offence were seized under a panchnama. After completing the investigation, PSI Shri Sharma filed charge-sheet against the accused on 31.5.1984 in the Court of the learned Judicial Magistrate First Class. Charge Ex. 7 was framed against the respondents-accused, which was explained and read over to the accused. The accused pleaded not guilty to the charge and claimed to be tried.

3. In order to prove its case, the prosecution examined following witnesses:

- (1) PW 1 Ex 35 Sonaji Vaghaji,
- (2) PW 2 Ex 39 Versi Sonaji,
- (3) PW 3 Ex 43 Bhomabhai Premabhai,
- (4) PW 4 Ex 44 Bhura Vagha,
- (5) PW 5 Ex 45 Dr.R.N.Soni,

- (6) PW 6 Ex 48 Tejaji Velji Sipai,
- (7) PW 7 Ex 50 Thana Bhikha,
- (8) PW 8 Ex 52 Pirumal Dharamdas,
- (9) PW 9 Ex 55 Nagji Henduji,
- (10) PW 10 Ex 57 Jada Pala,
- (11) PW 11 Ex 58 Sada Patha
- (12) PW 12 Ex 62 Dr.R.A.Gagnani,
- (13) PW 13 Ex 74 Jasvantbhai Dhirubhai,
- (14) PW 14 Ex 75 Narsung Dahya,
- (15) PW 15 Ex 76 Huseinkhan Sherkhan,
- (16) PW 16 Ex 78 PSI R.C.Sharma,

In support of its case, prosecution has relied upon documentary evidence consisting of medical certificate dated 1.5.1984 of Versi Sonaji, discovery panchnama, panchnama of the scene of offence, panchnama of the person of injured Versi Sonaji, etc.

4. After recording the evidence of the prosecution witnesses, the accused were examined under S.313 of the Code of Criminal Procedure, 1973, wherein the accused stated that because the prosecution witnesses are inimical towards them, they have been falsely involved in the case.

5. After appreciating the evidence and hearing the learned Advocate appearing for the parties, the learned Magistrate recorded the following conclusions :

- (i) The incident in question had taken place around 10.0 a.m. whereas the complaint was lodged after 8 hours.
- (ii) Medical evidence does not corroborate the ocular evidence of injured Versi.
- (iii) Witnesses examined by the prosecution are inimical towards the accused.
- (iv) Evidence of the prosecution witnesses is quite contradictory.
- (v) Evidence of the prosecution witnesses is full of contradictions and omissions which are proved in the evidence of the Investigating Officer.
- (vi) Prosecution has projected Bhoma Prema and Bhura Vagha who are relatives of the complainant as eye-witnesses of the incident, who have in their cross-examination turned out to be unreliable and untrustworthy witnesses.

(vii) Evidence of the complainant is untrustworthy because in the chief-examination he denied any relationship with eye-witnesses Bhoma Prema and Bhura Vagha, which turned out to be false.

(viii) Injured Versi was found to be taking bath at the boring in half-naked position and when the ladies came to fetch water from the boring, he was rebuked by the ladies and the neighbouring residents to go away.

(ix) The injuries sustained by injured Versi were possible by hitting the water tap and thereafter falling on the otta while running away.

In view of the above referred to conclusions, the learned Magistrate acquitted the accused of the offences under S.324, 325, 323, 504 read with S.114 of the I.P.Code which has given rise to the present appeal by the State of Gujarat.

6. Mr.M.A.Bukhari, ld.APP has referred to the evidence of the prosecution witnesses, and submitted that the learned Magistrate has erred in not relying on the evidence of injured Versi, which is corroborated by the complaint lodged by his father. It is further submitted by the learned APP that the evidence of the injured witness is corroborated by medical evidence. It is the submission of the learned APP that there was no delay in lodging the complaint, and even if there was any delay, it was properly explained by the prosecution. On the above submissions, the learned APP pleaded that the appeal may be accepted.

7. I have gone through the entire evidence of the prosecution witnesses as well as the documents produced on record. The learned Magistrate has rightly disbelieved the version of the prosecution witnesses on the ground that the same was self-contradictory and no reliance can be placed on it. I am in agreement with the reasoning of the learned Magistrate that the evidence of injured witness Versi was quite contradictory to the medical evidence. The learned Magistrate has also given cogent reasons in rejecting the prosecution evidence on the ground that the witnesses were inimical towards the accused and therefore, there were all the chances that the accused were falsely involved in the present incident. The reasoning of the learned Magistrate that the evidence of injured Versi and his father - complainant Sonaji, PW 1, was contradictory is based on proper appreciation of evidence. The learned Magistrate has also given cogent

reasons for not believing the evidence of injured Versi on the ground that the injuries as narrated by Versi were not found on his body by the medical officers Dr.R.N.Soni, PW 5, and Dr.R.A.Gagnani, PW 12.

8. If the evidence of the prosecution witnesses is closely scrutinised, it shows that eye-witnesses Bhoma Prema, PW 3, and Bhura Vagha, PW 4, are got up witnesses, who were not present at the time of the incident, and they were projected as eye-witnesses because they are close relatives of injured Versi. The evidence of injured Versi is self-contradictory to the medical evidence. On the contrary, the defence of the accused is more probabalised looking to the injuries sustained by Versi. The prosecution evidence, on the contrary, establishes that Versi was taking bath at the tap of the boring where ladies had come to fetch water, and as he was in half-naked position, he was scolded by the ladies and the neighbouring residents, as a result of which he got up and tried to run away, and in that process, he might have sustained the injuries on his head and other parts of the body. In my opinion, the learned Magistrate has rightly rejected the evidence of the prosecution witnesses for the reasons stated in the impugned judgment.

9. It is pertinent to note that the incident in question took place as per the say of the complainant at 10.0 a.m., while the complaint was lodged at 6.0 p.m., i.e. after 8 hours. The prosecution has tried to explain the delay by recording the further statement of the complainant after 9 days, i.e. on 9.5.1984. In the further statement, the complainant had tried to explain the delay. But the reasons given by him are baseless. In my opinion, there was unexplained delay in lodging the complaint, which is fatal to the prosecution case. It would not be out of place to mention that the complaint was lodged after due deliberation by the complainant and his relatives, and they have falsely involved the accused in the incident. Therefore, the conclusion of the learned Magistrate that there is inordinate delay in lodging the complaint is just and proper.

10. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Magistrate who had opportunity to observe the demeanour of the witnesses. As this court is in general agreement with the view expressed

by the learned Magistrate, I do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the trial Court, and in my view, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & ORS. vs. BIJENDRA NARAIN CHAUDHARY, AIR 1967 SC 1124, and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Addl. Public Prosecutor has failed to dislodge the reasons given by the learned Magistrate in order to convince me to take the view contrary to the one already taken by the learned Magistrate.

11. For the foregoing reasons, I do not see any merits in the appeal, and the appeal is liable to be dismissed. The appeal therefore, fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned trial Magistrate in the impugned judgment.

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